

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4308 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANPRASAD S DAVE

Versus

BHAVNAGAR MUNICIPAL CORPN

Appearance:

MR DM THAKKAR for Petitioner

MR JR NANAVATI for Respondent No. 1

Non present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/97

ORAL JUDGEMENT

1. The petitioner, a Sr. Clerk of the Bhavnagar Municipal Corporation, Bhavnagar, filed this Special Civil Application and prayer has been made for quashing and setting aside of the order of the respondent No.1 promoting the respondent No.2 from the post of Jr. Clerk to that of Sub-Inspector. Further prayer has been made by the petitioner for direction to the respondent No.1 to

consider the case of the petitioner for promotion to the post of Sub-Inspector with effect from the date his juniors have been promoted to the said post with the consequential benefits.

2. Earlier also, the writ petitions were filed before this Court as and when the respondent No.2 has been given the promotion i.e. first time on adhoc basis and second time on regular basis and those writ petitions came to be allowed. The respondent No.2 has been given the promotion under the order annexure 'A' dated 12th July, 1985, which is under challenge in this Sp. C.A.. The criteria for promotion to the post of Sub-Inspector is seniority-cum-merit.

3. The learned counsel for the respondent No.1 on asking of the Court was unable to satisfy the exclusion of the petitioner from consideration for promotion. What the learned counsel for the respondent No.1 contended that the promotion to the post of Sub-Inspector has to be made only from the Jr. Clerks and not from the Sr. Clerks. He further contended that the post of Sr. Clerk is almost equal to the post of Sub-Inspector. On the record, the learned counsel for the respondent No.1 has failed to produce any provision from the Act, Rules or Resolution of the Corporation providing the criteria for promotion, eligibility for promotion, and the feeder cadre from which promotion is available to the post of Sub-Inspector. However, the counsel for the respondent admits that the post of Sr. Clerk is not equal to the post of Sub-Inspector in the pay scale. So the exclusion of the petitioner's case from consideration for promotion is wholly arbitrary and unjustified. This cadre of Sr. Clerk could not have been excluded from consideration for promotion to the post of Sub-Inspector unless it is so provided by some provision under the Act or Rules or Resolution of the Corporation.

4. Then the counsel for the respondent No.1 contended that otherwise also the service record of the petitioner was not satisfactory, and as such, he could not have been given the promotion. Reference has been made in this respect to the averments made in Para No.12 of the reply. However, the misconduct alleged against the petitioner was of the year 1959 and for that misconduct whatever may be the seriousness thereof, the ultimate penalty of Rs.5/- has been imposed on him vide order dated 2nd May, 1959. The promotion of the respondent No.2 has been made in the year 1985 i.e. after about more than 25 years and only on this adversity, I fail to see any justification in the

contention of the counsel for the respondent No.1 that the petitioner could not have been adjudged suitable for promotion. No adversity has been pointed out by the counsel for the respondent No.1 in the service record of the petitioner after 1959.

5. In the result, this Sp. C.A. succeeds and the same is allowed. It is hereby declared that the petitioner had been illegally excluded from consideration for promotion to the post of Sub-Inspector while making the promotion of the respondent No.2. The respondent No.1 is directed to consider the case of the petitioner for promotion on the post of Sub-Inspector with reference to the date from which the promotion has been given to the respondent No.2 and in case, if he is adjudged suitable for promotion then he shall be entitled for all the consequential benefits which follow therefrom. The counsel for the petitioner has given out that during the pendency of this Sp. C.A. the petitioner has already retired from the services. In view of this fact, the respondent No.1 is directed to consider the case of the petitioner for promotion on the post of Sub-Inspector with reference to the date aforesaid within a period of three months from the date of receipt of certified copy of this order and in case, he is found suitable for promotion then he shall be entitled for all the consequential benefits which follow therefrom including the revision of pension and other retirement benefits which should be given to him within two months next thereafter. The Sp. C.A. and Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-